

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 211 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO  
No
  2. To be referred to the Reporter or not? No :
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO  
No
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO  
No
  5. Whether it is to be circulated to the Civil Judge? No :

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NATIONAL INSURANCE CO LTD

Versus

UNION OF INDIA  
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Appearance:

MR BHARAT B SHAH for Petitioners  
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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 14/03/2000

ORAL JUDGEMENT

1. This is plaintiff's First Appeal against the Judgment and Decree dated 12.11.1979 of Court No.6, City Civil Court, Ahmedabad, dismissing the suit of the plaintiff.

2. Brief facts are that the plaintiff No.1 is

Insurance Co. and plaintiff No.2 is a registered Partnership Firm carrying on business in Tinsukhia, Assam. Plaintiff No.2 is the endorsed consignee and owner of five suit consignments. These consignments were booked from Ahmedabad between 20.10.1972 to 27.10.1972 and for all these consignments the plaintiff No.2 was endorsed consignee. The consignments contained cotton piece goods. When the delivery was to be taken at the destination it was found that the consignment was heavily wet and damaged. Open delivery was taken. The damage Certificate was issued by the Railway Authorities and quantum of damage was quantified. After serving the statutory notice on the defendants, Suit for recovery of Rs.4,104.37 ps. was filed. Rs.95.63 ps. were also claimed towards cost of notice.

3. The Suit was resisted on variety of grounds taking the plea of want of jurisdiction, mis-joinder of causes of action, want of service of valid notices under Sec.78(B) of the Indian Railways Act and Section 80 of the Code of Civil Procedure. It was also pleaded that the goods were not packed according to packing conditions prescribed by the defendant Railway Administration. Plaintiff's right to sue was also challenged. It was also pleaded that the plaintiff No.2 is not a registered Partnership Firm.

4. The findings of the trial Court, except on Issue No.5, are against the plaintiff - appellant. Consequently the Suit was dismissed. It is, therefore, this Appeal.

5. Shri R.N.Shah, learned Counsel for the appellant has confined his arguments only on the findings recorded by the trial Court on Issues No.1 and 7. The trial Court found that the consignment was not packed according to packing conditions prescribed by the Railway administration and that the damage to the consignment was not on account of any negligence on the part of the Railway Employees. However, after going through the impugned judgment I do not find much force in the contention that the findings recorded by the trial Court on Issue Nos.1 and 7 are, in any way, contrary to law. The trial Court found from the evidence on record that the consignments at the destination station were found wet and water soaked. Damage certificate issued by the Railway Administration was also considered by the trial Court. The trial Court further found that packing condition No.14 regarding bales of cotton pieces was not complied with by the consignor. The statement of plaintiff's witness Jivansing was correctly appreciated by the trial Court. This witness could not say what was

the packing condition of the consignment. The witness stated that the bales were obtained in packed condition from the factory and were tendered for carriage and delivery in the same condition. Consequently this witness could not say whether the concerned factory observed packing conditions while preparing the bales for carriage and delivery. These bales were not touched by the plaintiff No.2 also. The trial Court after giving detailed reasons found that packing condition No.14 of goods tariff No.3, Part : I, Section 2, Chapter IX was not observed. When open delivery of consignment was taken at the destination station it was found that requirement of packing condition No.14 was not found fulfilled. It is because of this non-fulfilment of packing condition No.14 that water percolated inside the consignment and caused damage to the consignment. If packing conditions were not observed and if damage was caused to the consignment because of non-fulfilment of packing condition it can be hardly said that there was any negligent or misconduct on the part of the Railway Administration or its employees in carrying the goods for safe delivery at its destination. The trial Court was therefore justified in answering Issue No.1 in negative and Issue No.7 in affirmative.

6. The trial Court also considered the applicability of Section 77-C(2) of the New Act. However, that observation is not material at this stage inasmuch as I find that the findings recorded by the trial Court on Issue Nos. 1 and 7 hardly require any interference. The ultimate conclusion of the trial Court has been that the plaintiffs are not entitled to any damages and the Suit has to be dismissed. This conclusion is also in accordance with law.

7. No other point was pressed from the side of the appellant. I, therefore, do not find any merit in this Appeal which is hereby dismissed. No order as to costs.

sd/-

Date : March 13, 2000 ( D. C. Srivastava, J. )

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